



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

April 26, 1974

RG 573

The Honorable Sam Kelley, Commissioner
Consumer Credit Commission
P. O. Box 2107
Austin, Texas 78767

Open Records Decision No. 29

Re: Request for copies of
home improvement
investigations.

Dear Commissioner Kelley:

You have received a letter from a citizen requesting that you
furnish:

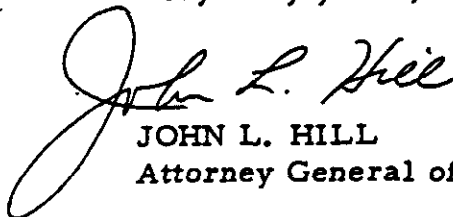
1. all notes, memoranda, documents, files, correspondence, reports, transcripts, records, or other information or evidentiary material regarding or relating to actions by the Consumer Credit Commission and/or the Consumer Credit Commissioner which resulted in the issuance of your Docket L-73, a Cease and Desist Order against Alamo Building Industries, Inc., on January 8, 1968;
2. all notes, memoranda, documents, files, correspondence, reports, transcripts, records, or other information or evidentiary material regarding or relating to an investigation conducted by the Consumer Credit Commission and/or the Consumer Credit Commissioner between 1967 and 1970 and commonly known as the "Home Improvements Investigation";
3. and, in particular, such evidentiary or other material as may contain a detailed description of those actions on the part of Alamo Building Industries, Inc., which resulted in the issuance of your Docket L-73, a Cease and Desist Order against Alamo Building Industries, Inc., on January 8, 1968.

The Honorable Sam Kelley, page 2 (ORD #29)

You have suggested that the information requested is exempt from disclosure under Sections 3(a)(1), 3(a)(3), 3(a)(11) and 3(a)(12) of the Open Records Act [Article 6252-17a, V. T. C. S.]. Your Sec. 3(a)(1) contention is based on a rule promulgated by the Commissioner and filed with the Secretary of State. While a rule may be entitled to the same considerations as a statute in other contexts, [see, Texas Liquor Control Board v. Attic Club, Inc., 457 S.W.2d 41 (Tex. 1970), app. dis'm., 400 U.S. 986 (1971)], we do not believe a governmental body may bring its information within an exemption under the Open Records Act merely by the promulgation of a rule. It is our opinion that Sec. 3(a)(3) is inapplicable to this case, since a mere chance of litigation is insufficient to warrant a withholding of information which would otherwise be public. Open Records Decision No. 27 (1974). We have been furnished with no facts which suggest that litigation is pending or seriously contemplated. Section 3(a)(12) applies only to examination, operating or condition reports, and we have found no information in the file which would fit that description.

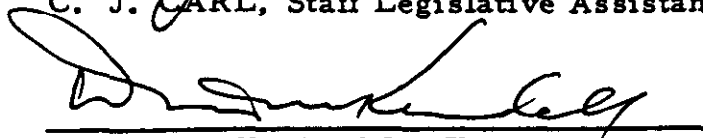
Section 3(a)(11) does cover the single un-dated intra-agency memorandum summarizing the status of the case. However, as we pointed out in Open Records Decision No. 20 (1974), that portion of the memorandum containing purely factual information should be disclosed, but the portions of the memorandum reflecting evaluations and conclusions may be withheld. But see, Sec. 3(c) of the Act.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


C. J. CARL, Staff Legislative Assistant


DAVID M. KENDALL, Chairman
Opinion Committee